



## State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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CANDIA EDUCATION ASSOCIATION,  
NEA-NEW HAMPSHIRE

Complainant

v.

CANDIA SCHOOL DISTRICT

Respondent

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CASE NO. T-0384:6

DECISION NO. 97-036

### APPEARANCES

Representing Candia Education Association, NEA-NH:

James Allmendinger, Esq.

Representing Candia School District:

Harry Gale, Board Consultant

Also appearing:

Deborah Raiche, Candia Education Association  
Donna Stathos, Candia Education Association  
Adrienne R. Sherry, Candia Education Association  
Tom St. Martin, Self  
Barbara Muller, Candia Education Association  
Greg Andruschkevich, UniServ Director  
Paul Fillion, Superintendent, SAU #15  
Hiedi Doyon, Candia School Board  
Ingrid C. Byrd, Candia School Board  
Kenneth Goekjian, Candia School Board  
John Penfield, Candia, New Hampshire  
Carla Penfield, Candia, New Hampshire  
Barbara O'Brien, Neighborhood Publications  
Elliot Hardy, Candia School District

## BACKGROUND

The Candia Education Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Candia School District (District) on January 7, 1997 alleging violations of RSA 273-A:5 I (a), (e), and (g) resulting from bad faith bargaining when a school board member/chairperson engaged in activities to encourage voters to defeat funding for tentatively agreed-to agreements which had been negotiated and/or supported by her in earlier stages of the negotiations process. The Candia School District, through its School Board, filed its response on January 22, 1997. This matter was then heard by the PELRB on February 4 and March 4, 1997.

## FINDINGS OF FACT

1. The Candia School District is a "public employer" of teachers and other personnel within the meaning of RSA 273-A:1 X.
2. The Candia Education Association, NEA-New Hampshire, is the duly certified bargaining agent for teachers and professional staff employed by the District.
3. The District and the Association are parties to a collective bargaining agreement (CBA) for the period July 1, 1993 through June 30, 1994 and continuing thereafter under the *status quo* doctrine since there has not been a subsequent agreement on and funding for a successor contract.
4. Historically and for periods of time which are time barred for the processing of a ULP by RSA 273-A:6 VIII, i.e., before July 7, 1996, the parties have had a long bargaining history in their attempts to reach accord and funding for a successor contract. In March or April of 1994, a tentative agreement ("TA") was accepted by the Board and rejected by the Association. Thereafter, there were negotiations, mediation on February 7, 1995, fact finding on April 18, 1995 and rejections of those recommendations by the Board on June 1, 1995 which the Association had previously accepted. After an agreement by the parties on or about August 30, 1995, the voters rejected that package on October 14, 1995. Another agreement reached by the parties on or about December 7, 1995 was rejected by the voters in a special district meeting on January 20, 1996. A

third agreement reached between the parties on or about February 19, 1996 went to the annual district meeting on March 9, 1996 and was rejected by voters. The parties reached a fourth agreement on May 7, 1996 which went to a special district meeting on June 21, 1996 and was defeated by the voters. A fifth agreement reached between the parties on or about September 16, 1996 never went to the voters of the District. During the foregoing bargaining activity, Ingrid Byrd was a member of the school board and now serves as its chair. She was not a member of its negotiating committee.

5. On September 16, 1996, Ingrid Byrd voted against ratifying a new teacher contract as a member of the Candia School Board. The overall Board vote for that contract was positive, however, the issue was never presented to the District's voters because the Superior Court refused to grant a special meeting for purposes of voting on that contract. (Board Exhibit No. 2.)
6. On or about September 24, 1996 Byrd and her spouse, William "Kim" Byrd, attended a meeting of the Merrimack Taxpayers Association in Merrimack, New Hampshire. Mr. Byrd has been an activist with the Candia Residents Coalition for Fiscal and Educational Responsibility, a watchdog group which publicizes public education issues and recommends how voters should vote on those issues, e.g. Association Exhibit Nos. 5, 6, 10 and 12. Ingrid Byrd's testimony to the PELRB was that she never spoke publicly against ratification of teacher contracts since she was elected to the Candia School Board and that she did not "address" the Merrimack Taxpayers Association, although she did answer questions asked of her at that meeting, such as how she handled the conflict of her being a teacher, in a different district, and a school board member simultaneously.
7. After the Merrimack Taxpayers Association meeting, its publication, "Merrimack Moment," for October - December, 1996, reported, *inter alia*, that "Mr. and Mrs. Byrd of Candia...talked of their ongoing fight against inflated teacher's [sic] contract in that town. Due to the efforts of the Byrds and their group, the latest contract has been turned down at 4 meetings in the past nine months and was refused another

Special Meeting in Superior Court." (Association Exhibit No. 4.) Ingrid Byrd testified that she first saw this version of "Merrimack Moments" when it was appended to the Association's ULP in January of 1997. She has not asked for it to be corrected or recanted to be consistent with her version of her role at that meeting, as described in Finding No. 6.

8. Heidi Doyon is president of the Merrimack Taxpayers Association and attended the meeting held on September 24, 1996. She confirmed that Ingrid Byrd was also present, that she did not "address" the meeting but that she did respond to questions. Doyon explained the editorial policy of "Merrimack Moments," namely, that her husband, George, edits it, it is reviewed by the Board of the Taxpayers Association and then published. Notwithstanding this editing and review process, she said the account of the Byrds' activities at the September 24, 1996 meeting was flawed with respect to what Ingrid Byrd actually did. She confirmed that "Merrimack Moments" has not retracted or corrected its account of that meeting.
9. Ingrid Byrd testified that she quit the Candia Residents Coalition after her election to the School Board and that she no longer hosted Coalition meetings in her home after that election. She did say that she participated in passing out materials of the Coalition, namely Association Exhibit No. 6, along with others in preparation for the March 30, 1996 School District meeting. This was done with the knowledge and permission of the meeting moderator. She considered the handout to be non-political and informational not withstanding its sponsorship.

#### DECISION AND ORDER

Over the years, this Board has considered a number of cases where public officials, charged with a public trust, have participated in actions which appear to have tainted their discharge of that public trust. In 1985, we considered the case of a school board member who showed up, unannounced, at an elementary school and quizzed teachers about students' Christmas parties. Charges were filed and teachers testified that they were intimidated by this conduct. In our decision, we distinguished between the conduct of an individual school board member, who was also a parent with school-age children, and the actions of the school board acting as a body. While we said

that, under the circumstances of this case, the actions of one individual cannot be held to be the actions of the board, we "cautioned" that one's position "as a school board member...gives him a special public trust and he bears the responsibility to conduct himself in a way as to avoid any appearance of acting contrary to 273-A and its protection of the rights of teachers." Groveton Education Association and Groveton School District, Decision No. 86-37 (June 11, 1986). Over a decade later, this is still good advice to school board members who may be inclined to operate outside the mandate of their office.

In 1991 we had the case of a selectman (non-negotiator)/citizen/talk show host who used his cable television program as a forum for discussion about the negotiations for a collective bargaining agreement for the local fire department. His comments were made while the parties were in negotiations and prior to impasse. Finding that the selectman acted as an individual and not as a member of or agent for the board of selectmen, we said he "walked up to the line but did not cross it," while expressing our concerns about abridging his First Amendment rights. Salem Brotherhood of Firefighters v. Town of Salem et al., Decision No. 92-09 (January 22, 1992).

The Supreme Court spoke to a similar issue in Appeal of City of Portsmouth Board of Fire Commissioners, 137 NH 552 at 556 (1993) when it said the comments of an individual identified as a fire commissioner cannot "insulate" the public employer "from the proscriptions of RSA Chapter 273-A by always [claiming that the speaker was] acting as [an] individual, rather than as a unified body [because this] contravenes the policy of the state to foster harmonious and cooperative relations between public employers and their employees." "A public employer will be responsible for its agent's acts when employees would have just cause to believe that the agent was acting for and on behalf of the public employer." This, too, is good advice to be remembered and followed by school board members who may be inclined to operate outside the scope of their elected office.

With this background in mind, we conclude that Ingrid Byrd walked up to the line but did not cross it. As in Salem Firefighters, there is no indication that she was acting on behalf of the school board as a whole nor did her actions preclude the board from voting to approve the TA and send it to the voters in September of 1996. Finding No. 5. This is cause for us to dismiss the pending charges.

Having so concluded, we also observe that, as a school board member and as its chair, Ingrid Byrd exercised incredibly poor

judgment by permitting herself to become involved in an extra-curricular activity in another community which produced a strong appearance of impropriety, and, once that appearance was memorialized by a media article, did not strive to have her role and participation recanted and correctly reported. This presumes, for the benefit of a doubt, that the article was an inaccurate portrayal, notwithstanding the editorial consensus described by Doyon which, nevertheless, permitted this erroneous rendition of Byrd's activity to slip through the cracks. Under the presumptions described in City of Portsmouth, above, Byrd's actions, as reported, come precariously close to suggesting that she either was straying from the statutory mandate "to foster harmonious labor relations" or gave the appearance of straying in that direction. Neither is helpful to the negotiating process contemplated under RSA 273-A. This is one of those cases where the appearance of impropriety was as damaging as an actual impropriety would have been. Hopefully, the parties have learned from this experience and will not repeat it.

The ULP is dismissed.

So ordered.

Signed this 21st day of March, 1997.

  
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JACK BUCKLEY  
Alternate Chairman

By unanimous decision. Alternate Chairman Jack Buckley presiding.  
Members E. Vincent Hall and William Kidder present and voting.